

Message Text

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EA - MR. LAMBERTSON

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FM SECSTATE WASHDC

TO AMEMBASSY JAKARTA IMMEDIATE

AMEMBASSY MANILA IMMEDIATE

AMEMBASSY BANGKOK IMMEDIATE

INFO USMISSION USUN NEW YORK IMMEDIATE

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LIMDIS NEWSOM FROM MOORE - BANGKOK FOR OXMAN FOR STEVENSON

E.O. 11652: GDS

TAGS: PBOR

SUBJECT. LOS: USG/GOI CONSULTATIONS WASHINGTON

MAY 31-JUNE 1

U.S. FULLY INFORMED INDONESIAN TEAM OF PROCEDURES FOLLOWED BY U.S. PURSUANT TO JAKARTA UNDERSTANDING AND OF UPCOMING MANILA CONSULTATIONS. INDONESIANS APPRECIATIVE OF U.S. EFFORTS WITH MARITIME STATES AND SUPPORT MANILA CONSULTATIONS AT THIS TIME. AT END OF THIS MESSAGE ARE U.S. NOTES ON LOS CONSULTATIONS BETWEEN GOI AND USG WHICH TOOK PLACE IN WASHINGTON. THESE NOTES SHOULD BE DELIVERED PERSONALLY TO SOEDARMONO (AND SOEDARMONO ONLY) ASAP ON HIS RETURN FROM LONDON CONSULTATIONS. EMBASSY SHOULD MAKE FOLLOWING POINTS ON DELIVERY:

(A) U.S. MOST APPRECIATIVE OF INDONESIAN EFFORTS WITH ARCHIPELAGO STATES AND WASHINGTON TALKS AND FEEL THAT PROGRESS
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IS BEING MADE.

(B) IT IS IMPORTANT IF PROGRESS TO BE SUSTAINED AND U.S. TO BE ABLE TO SUPPORT AT CARACAS FOR PARTIES TO SEEK FINAL AGREEMENT DURING FIRST WEEK IN CARACAS. IN THIS RESPECT

DEFINITE OFFER FROM INDONESIA TO U.S. TEAM BEFORE CARACAS
ON LIMITS OF SEALANES WOULD BE VERY HELPFUL.

(C) U-S. UNDERSTANDS ITS VERSION DRAFT PROVISIONAL NOTES
LOOSE INTERPRETATION OF MEETING AND DOES NOT NECESSARILY
REPRESENT INDONESIANS UNDERSTANDING ON ALL ISSUES IN VIEW

LACK OF TIME. IT IS SENT IN EFFORT TO MAKE PROGRESS AND
IDENTIFY PRECISE AREAS AGREEMENT AND DISAGREEMENT. IN THIS
RESPECT WE WOULD APPRECIATE EARLY RESPONSE BEFORE CARACAS
AS TO WHAT POINTS INDONESIANS WOULD CHANGE OR ADD.

BEGIN TEXT

PROVISIONAL DRAFT CONFIDENTIAL

NOTES CONCERNING LAW OF THE SEA CONSULTATIONS JUNE 1, 1974

1. PURSUANT TO CORRESPONDENCE BETWEEN THEIR RESPECTIVE
HEADS OF STATE, REPRESENTATIVES OF INDONESIA AND THE UNITED
STATES MET IN JAKARTA ON MARCH 25 AND 26, 1974 TO DISCUSS
QUESTIONS OF MUTUAL INTEREST REGARDING THE THIRD U.N.
CONFERENCE ON THE LAW OF THE SEA. THESE DISCUSSIONS WERE
CONTINUED IN WASHINGTON ON MAY 31 AND JUNE 1. THE INDO-
NESIAN DELEGATION WAS LED BY AIR VICE MARSHAL SUDARMONO,
CHIEF OF GENERAL STAFF, DEPARTMENT OF DEFENSE AND SECURITY.
THE UNITED STATES DELEGATION WAS LED BY MR. JOHN NORTON
MOORE, CHAIRMAN OF THE NATIONAL SECURITY COUNCIL INTERAGENCY
TASK FORCE ON THE LAW OF THE SEA AND DEPUTY SPECIAL REPRESENTATIVE
OF THE PRESIDENT FOR THE LAW OF THE SEA CONFERENCE. A LIST OF DELEGATION MEMBERS IS ATTACHED. BOTH
DELEGATIONS EXPRESSED THEIR APPRECIATION FOR THE CONSULTATIONS
AND THE IMPORTANCE OF CONTINUED CLOSE COOPERATION
BETWEEN THEIR DELEGATIONS WITH A VIEW TO REALIZING MUTUAL
INTERESTS IN THE LAW OF THE SEA CONFERENCE.

2. DISCUSSIONS FOCUSED ON THREE POINTS OF MUTUAL INTEREST.
THESE WERE:
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(A) THE DEFINITION OF AN ARCHIPELAGIC STATE
(B) THE REGIME OF ARCHIPELAGIC WATERS, INCLUDING PASSAGE
OF SHIPS AND AIRCRAFT
(C) THE REGIME OF STRAITS USED FOR INTERNATIONAL NAVIGATION
(OUTSIDE ARCHIPELAGIC WATERS)

3. WITH RESPECT TO THESE POINTS OF MUTUAL INTEREST BOTH
DELEGATIONS AGREED TO RECOMMEND TO THEIR GOVERNMENTS THAT
BOTH GOVERNMENTS MUTUALLY SUPPORT THE FOLLOWING OBJECTIVES
IN THE LAW OF THE SEA NEGOTIATIONS SUBJECT TO FINAL AGREEMENT
ON UNRESOLVED ISSUES:

(A) CONCERNING ARCHIPELAGIC STATES THAT THE NEW COMPRE-

HENSIVE TREATY ON OCEANS LAW TO BE NEGOTIATED AT THE LAW OF THE SEA CONFERENCE INCLUDE A CHAPTER ON ARCHIPELAGIC STATES TO PROMOTE THEIR UNIVERSAL RECOGNITION.

(B) WITH RESPECT TO THE DEFINITION OF AN ARCHIPELAGIC STATE THAT THE CHAPTER INCLUDE THE FOLLOWING ELEMENTS:

(1) AN ARCHIPELAGIC ISLAND STATE WHOSE COMPONENT ISLANDS AND OTHER NATURAL FEATURES FORM A SINGLE INTRINSIC GEOGRAPHICAL, CULTURAL, ECONOMIC AND POLITICAL ENTITY MAY DRAW ARCHIPELAGIC LINES CONNECTING OUTER POINTS OF THE OUTERMOST ISLANDS OF THE ARCHIPELAGO PROVIDED THAT SUCH LINES ENCLOSING THE ISLAND GROUP DO NOT ENCLOSE AN AREA OF WATER WHICH WILL RESULT IN A LAND-TO-WATER RATIO OF GREATER THAN 1:1 OR LESS THAN 1:5 AND PROVIDED THAT THE MAXIMUM LENGTH OF ANY SUCH LINES SHALL NOT EXCEED 80 NAUTICAL MILES EXCEPT THAT ONE PERCENT OF SUCH LINES MAY EXCEED 80 NAUTICAL MILES PROVIDED THEY DO NOT EXCEED 100 NAUTICAL MILES. (THE INDONESIAN DELEGATION WAS OF THE VIEW THAT THIS PROVISION SHOULD APPLY TO 4 OR 5 SUCH LINES WITHIN THE INDONESIAN ARCHIPELAGO.)

(2) THESE LINES SURROUNDING ARCHIPELAGIC WATERS SHALL BE DESIGNATED ARCHIPELAGIC LINES.

(3) FOR THE PURPOSE OF COMPUTING THE LAND-TO-WATER RATIO
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IN PARAGRAPH 1, LAND AREAS SHALL INCLUDE WATERS WITHIN REEFS AND LAGOONS OF ATOLLS.

(4) WATERS WITHIN ARCHIPELAGIC LINES SHALL BE DESIGNATED ARCHIPELAGIC WATERS.

(5) THE TERRITORIAL SEA AND ANY ECONOMIC JURISDICTION OF THE ARCHIPELAGIC STATE SHALL BE DRAWN FROM THE OUTSIDE PERIMETER OF THE ARCHIPELAGIC LINES.

(C) WITH RESPECT TO THE REGIME OF ARCHIPELAGIC WATERS, INCLUDING PASSAGE OF SHIPS AND AIRCRAFT, THAT THE CHAPTER ON ARCHIPELAGIC STATES INCLUDE THE FOLLOWING ELEMENTS:

(1) SUBJECT TO THE PROVISIONS CONCERNING ARCHIPELAGIC PASSAGE OF SHIPS AND AIRCRAFT THE ARCHIPELAGIC STATE WOULD EXERCISE SOVEREIGNTY OVER THE RESOURCES, WATERS, SEABED AND SUBSOIL AND AIRSPACE ENCLOSED WITHIN THE ARCHIPELAGIC LINES.

(2) THE TREATY WOULD SPECIFY THAT THE RIGHT OF NAVIGATION IS A RIGHT OF TRANSIT IN ARCHIPELAGIC SEALANES THROUGH

AND OVER THE ARCHIPELAGO STATE -- THAT IS, A RIGHT OF UNIMPEDED ARCHIPELAGIC PASSAGE OF THE ARCHIPELAGO STATE -- IN THE NORMAL MODE FOR VESSELS AND AIRCRAFT

(INCLUDING SUBMERGED TRANSIT, OVERFLIGHT, AND NOMAL MEASURES ASSOCIATED WITH TRANSIT), AND WITH NO REQUIREMENT OF NOTIFICATION.

(3) IT WAS THE POSITION OF THE INDONESIAN DELEGATION IN CONNECTION WITH THIS OVERFLIGHT RIGHT THAT THIS RIGHT SHOULD BE SUBJECT TO OBSERVANCE OF APPLICABLE ICAO REGULATIONS AND SAFETY OF NAVIGATION IN THE AREA, AND THAT ANY FINAL RECOMMENDATION ON THIS ISSUE WOULD BE SUBJECT TO FURTHER CONSIDERATION BY THE INDONESIAN GOVERNMENT. IT WAS THE POSITION OF THE U.S. DELEGATION THAT SUCH REGULATIONS FOR TRANSIT OVER ARCHIPELAGIC SEALANES WOULD BE APPLICABLE ICAO HIGH SEAS REGULATIONS. STATE AIRCRAFT WOULD NORMALLY COMPLY WITH SUCH REGULATIONS AND WOULD AT ALL TIMES OPERATE WITH DUE REGARD FOR THE SAFETY OF NAVIGATION.

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(4) THE TREATY WOULD SPECIFY THAT THE TRANSITING VESSEL OR AIRCRAFT SHOULD TRANSIT THE ARCHIPELAGO WITHOUT UNREASONABLE DELAY.

(5) THE TREATY WOULD SPECIFY THAT TRANSITING VESSELS OR AIRCRAFT SHALL REFRAIN FROM ANY THREAT OR USE OF FORCE IN VIOLATION OF THE CHARTER OF THE UNITED NATIONS AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF THE ADJACENT ARCHIPELAGO STATE.

(6) THE TREATY WOULD PROVIDE THAT ARCHIPELAGIC PASSAGE WOULD TAKE PLACE IN DESIGNATED ARCHIPELAGIC SEALANES. SUCH ARCHIPELAGIC SEALANES WOULD RUN FROM HIGH SEAS TO HIGH SEAS AND WOULD:

A) INCLUDE ALL NORMAL PASSAGE ROUTES THROUGH ARCHIPELAGIC WATERS, AND WITHIN SUCH ROUTES ALL NORMAL NAVIGATION CHANNELS AND,

B) INCLUDE AN AREA WHICH AT ALL POINTS IS NOT LESS THAN THE NARROWER OF

I. 80 PERCENT OF THE AREA BETWEEN THE NEAREST POINT OF LAND ON THE MAIN ISLANDS, I.E., NOT DRYING ROCKS OR SHOALS, OR

II. NAUTICAL MILES. IT IS UNDERSTOOD THAT THE UNITED STATES DELEGATION CAN ACCEPT A FIGURE OF 100 NAUTICAL MILES AND THAT THE DELEGATION OF INDONESIA HAD INDICATED A PRELIMINARY FIGURE OF 10 NAUTICAL MILES AND WILL MAKE AN EFFORT TO CONVEY A FORMAL FIGURE TO THE U.S. DELEGATION BEFORE THE CARACAS SESSION OF

THE CONFERENCE.

C) THE OBLIGATION TO DESIGNATE ARCHIPELAGIC SEALANES PURSUANT TO THIS PRINCIPLE IS AN OBLIGATION OF THE ARCHIPELAGIC STATES. IT IS UNDERSTOOD IN THIS CONNECTION THAT BOTH DELEGATIONS ARE COGNIZANT OF THE ILLUSTRATIVE CHART OF NORMAL NAVIGATIONAL PASSAGES AND CHANNELS USED DURING THEIR DISCUSSIONS AND OF THE NEED

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FOR APPROPRIATE COMPULSORY DISPUTE SETTLEMENT PROCEDURES.

(7) THE TREATY WOULD PROVIDE THAT THE ARCHIPELAGIC STATE COULD REQUIRE NOTIFICATION FOR ANY VESSEL OR AIRCRAFT DEPARTING FROM THESE ARCHIPELAGIC SEALANES BECAUSE OF FORCE MAJEURE, DISTRESS OR OTHER CIRCUMSTANCES. (IT WAS UNDERSTOOD IN THIS CONNECTION THAT THE U.S. WILL CONSIDER WHETHER THIS PRINCIPLE COULD BE EXTENDED FROM NOTIFICATION TO AUTHORIZATION IN AREAS OUTSIDE ARCHIPELAGIC SEALANES EXCEPT FOR THOSE VESSELS AND AIRCRAFT DEPARTING FROM SUCH ARCHIPELAGIC SEALANES BECAUSE OF FORCE MAJEURE OR DISTRESS.)

(8) PROVISION WILL BE MADE IN THE TREATY TO PROTECT NORMAL SHIPPING OUTSIDE ARCHIPELAGIC PASSAGE AREAS.

(9) THE TREATY WOULD PROVIDE THAT THE ARCHIPELAGIC STATE MAY, WITHOUT DISCRIMINATION AMONG SHIPS, TEMPORARILY SUSPEND NAVIGATION IN CERTAIN AREAS OUTSIDE ARCHIPELAGIC SEALANES, IF SUCH SUSPENSION IS NECESSARY TO ITS SECURITY. SUCH SUSPENSION WOULD BE DULY PUBLISHED.

D) IN FURTHER RESPECT TO THE REGIME OF ARCHIPELAGIC WATERS BOTH PARTIES TAKE NOTE OF AND WILL CONTINUE TO STUDY THE QUESTION OF WHETHER THE TREATY SHOULD CONTAIN AN APPROPRIATE PROVISION CONSISTENT WITH THE SOVEREIGNTY OF THE ARCHIPELAGIC STATE PROVIDING FOR CONSULTATIONS WITH THE ARCHIPELAGIC STATE AT THE REQUEST OF OTHER STATES WITH A VIEW TO SAFEGUARDING THE INTEREST OF SUCH OTHER STATE REGARDING EXISTING USES OF THE SEA IN SUCH AREAS, EXCEPT NAVIGATIONAL USES PROVIDED FOR ELSEWHERE IN THE ARCHIPELAGIC CHAPTER, AND INCLUDING, INTER ALIA, FISHERIES, SUBMARINE CABLES AND PIPELINES.

E) WITH RESPECT TO THE REGIME OF STRAITS USED FOR INTERNATIONAL NAVIGATION (OUTSIDE ARCHIPELAGIC WATERS) THAT THE NEW COMPREHENSIVE TREATY ON OCEANS LAW TO BE NEGOTIATED AT THE LAW OF THE SEA CONFERENCE INCLUDE A CHAPTER ON TRANSIT OF STRAITS USED FOR INTERNATIONAL NAVIGATION TO INCLUDE THE FOLLOWING ELEMENTS:

(1) PROTECTION OF THE RIGHT OF UNIMPEDED NAVIGATION
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TION THROUGH AND OVER STRAITS USED FOR INTERNATIONAL

NAVIGATION -- IN THE NORMAL MODE FOR VESSELS AND AIRCRAFT (INCLUDING SUBMERGED TRANSIT AND OVER-FLIGHT) AND WITHOUT ANY REQUIREMENT OF NOTIFICATION.

(2) APPROPRIATE OBLIGATION ON TRANSITING VESSELS AND AIRCRAFT TO PROCEED WITHOUT DELAY THROUGH THE STRAIT, TO REFRAIN FROM ANY THREAT OR USE OF FORCE IN VIOLATION OF THE UN CHARTER AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF THE STRAIT STATE, TO COMPLY WITH ACCEPTED INTERNATIONAL STANDARDS RELATING TO THE SAFETY OF NAVIGATION AT SEA AND THE PREVENTION OF POLLUTION FROM SHIPS AND TO OBSERVE ICAO REGULATIONS (ICAO REGULATIONS RELATING TO OVERFLIGHT OF THE HIGH SEAS). STATE AIRCRAFT WILL NORMALLY COMPLY WITH SUCH SAFETY MEASURES AND WILL AT ALL TIMES OPERATE WITH DUE REGARD FOR THE SAFETY OF NAVIGATION.

(3) AUTHORITY TO ENFORCE AGAINST VESSELS NOT ENTITLED TO SOVEREIGN IMMUNITY APPLICABLE INTERNATIONALLY ESTABLISHED DISCHARGE STANDARDS AND TRAFFIC SEPARATION SCHEMES SUBJECT TO APPROPRIATE SAFEGUARDS.

(4) APPROPRIATE PROVISIONS FOR LIABILITY FOR VESSELS AND AIRCRAFT FOR DAMAGE TO THE STRAIT STATE CAUSES BY VIOLATION OF THE TREATY OBLIGATIONS IMPOSED ON TRANSITING VESSELS AND AIRCRAFT.

(5) THE DELEGATION WILL CONSULT FURTHER DURING THE PREPARATION OF SPECIFIC TREATY ARTICLES ON THE SPECIFIC MEANS OF IMPLEMENTING PROVISIONS TO ENSURE SAFETY AND ENVIRONMENTAL PROTECTION OF THE COASTAL STATE.

4. BOTH DELEGATIONS UNDERSTOOD THAT THESE PRINCIPLES WERE TO BE TAKEN AS A WHOLE AND THAT THE TWO DELEGATIONS SHOULD FURTHER CONSULT DURING THE FIRST WEEK IN CARACAS WITH A VIEW TO DEVELOPING SPECIFIC DRAFT ARTICLES ON ARCHIPELAGO STATES AND STRAITS USED FOR INTERNATIONAL NAVIGATION, AND TO REACH FINAL AGREEMENT ENABLING SUPPORT BY BOTH PARTIES OF THESE PRINCIPLES.

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DELEGATION PARTICIPANTS

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REAR ADMIRAL PRASODJO MAHDI
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